

April 24, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: Emerson Oil Co., Inc.

Date of Filing: March 30, 2007

Case No.: TEE-0043

On March 30, 2007, Emerson Oil Co., Inc. (Emerson) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that Emerson's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No. 2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² See H.R. Rep. No. 373, 96th Cong., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a “serious hardship, gross inequity or unfair distribution of burdens.”⁵ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm’s difficulty in complying with the reporting requirement against the nation’s need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁶ Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.⁷ If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA’s statistical sample will be unreliable.⁸

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm’s financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm’s continued viability;⁹ the firm’s only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;¹⁰ extreme or unusual circumstances disrupt a firm’s activities;¹¹ or a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹²

³ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁵ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁶ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁷ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁸ *Id.*

⁹ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

¹⁰ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

¹¹ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.*, 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm’s records inaccessible).

¹² *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

III. The Application for Exception

Emerson is a seller of petroleum products based in Homer, Louisiana. The firm has filed form EIA-782B from January 2002 to the present.¹³ Emerson requests that it be permanently relieved of the obligation to file form EIA-782B. Emerson bases its request on the fact that the firm has filed the form for several years.¹⁴ Emerson also maintains that it is a small firm and, therefore, the information it provides in Form EIA-782B is of little value.¹⁵

IV. Analysis

Exception relief is appropriate where a reporting requirement poses a serious hardship, inequity, or unfair distribution of burdens.¹⁶ In other words, relief is appropriate where the reporting requirement adversely affects the firm to a significantly greater degree than it affects other firms.

In this case, Emerson does not claim it is adversely affected by the reporting requirement.¹⁷ Rather, it bases its request for relief almost exclusively on the grounds that it has filed Form EIA-782B for several years. We have consistently held that the length of time that a firm has been required to file an EIA form does not alone constitute grounds for exception relief.¹⁸ Moreover, the small size of a firm does not justify relief. As mentioned above, EIA requires information from firms of all sizes in order to generate valid estimates and projections.

As the foregoing discussion demonstrates, Emerson has not shown that the requirement to complete Form EIA-782B is burdensome to the firm in a manner that distinguishes it from other similarly affected firms. Accordingly, we find that exception relief is not warranted in this case and, therefore, Emerson's Application for Exception should be denied.

It Is Therefore Ordered That:

(1) The Application for Exception filed by Emerson Oil Co., Inc., Case No. TEE-0043, be, and hereby is, denied.

(2) Administrative review of this Decision and Order may be sought by any person who is aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by the filing of a petition for review with the Federal Energy Regulatory

¹³ See Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (April 5, 2007).

¹⁴ See Application for Exception.

¹⁵ See Memorandum of Telephone Conversation between Ann Burton, Emerson, and Diane DeMoura, OHA (April 18, 2007).

¹⁶ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

¹⁷ Emerson's office manager stated that it takes her approximately one hour to complete the form. See Memorandum of Telephone Conversation between Ann Burton, Emerson, and Diane DeMoura (April 18, 2007).

¹⁸ See *Sound Oil Co.*, 25 DOE ¶ 81,006 (1994) (company had filed for ten years); *Halron Oil Co.*, 16 DOE ¶ 81,001 (1987) (12 years).

Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 835, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: April 24, 2007